



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

AUG 17 1988

Honorable J.F. Greene
Administrative Law Judge
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Re: Nelson Electrical Company, Inc.
Docket No. TSCA-III-270

Dear Judge Greene:

Enclosed please find a Motion to Amend Complainant's Prehearing Submittal and a Motion to Exclude Evidence at Trial, the originals of which were filed today with the Regional Hearing Clerk. Also enclosed for your information is a copy of a stipulation mailed to Respondent today.

Respectfully Submitted,

Stephen N. Field
Assistant Regional Counsel

AR100068

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. TSCA-III-270
:
NELSON ELECTRICAL CO., INC. :
Richmond, Virginia :
Respondent : MOTION TO AMEND COMPLAINANT'S
PREHEARING SUBMITTAL

Pursuant to 40 C.F.R. § 22.16 and 22.19 of the Consolidated Rules of Practice, Complainant, the U.S. Environmental Protection Agency (EPA) hereby moves to amend its Prehearing Submittal of March 23, 1988 as follows:

I. List of Witnesses - Additions

1. Carole Dougherty PCB Case Developer, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Ms. Dougherty is the Case Developer assigned to this case. At the time of the First Prehearing Submittal, no Case Developer was assigned to the case, due to staffing changes in the PCB program at Region III.

Ms. Dougherty will testify as to the methods the PCB program uses to maintain business records, in particular records of PCB inspections.

2. John Ruggerio - Section Chief - PCB Program, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Mr. Ruggerio will testify as to the method of calculation of the penalty and the rationale underlying penalty assessment.

Ms. Dougherty and Mr. Ruggerio will substitute for Lisa Nichols, whose testimony will no longer be necessary. Ms. Dougherty is the person with responsibility for the management of the case at bar, and Mr. Ruggerio is responsible for PCB program decisions as to penalty issues. Together, they are the witnesses most capable of presenting the EPA position on the

AR100069

matters in question. The substitution of these witnesses for Ms. Nichols does not prejudice respondent in any way.

3. S.R. Kayser, chemist, EPA Central Regional Laboratory, 839 Bestgate Road, Annapolis, Maryland 21401.

Ms. Kayser will testify as to the chain of custody for, and the analysis of, samples taken at Respondents facility at the May 14, 1986 inspection. Ms. Kayser's testimony will not be necessary if Respondent agrees to stipulate as to chain of custody and analysis issues. (Copy of stipulation enclosed).

4. Fredrick Knapp, Regional Economist, EPA Region III, 941 Chestnut Building, Philadelphia, Pennsylvania 19107.

Mr. Knapp will respond to any testimony that is admitted concerning Respondent's financial status. Complainant will seek to exclude such evidence in accordance with the Motion to Exclude Evidence submitted this day. Mr. Knapp's testimony will not be necessary if that Motion is granted.

II. Documents to be offered in evidence - Addition

1. EPA Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act.

The PCB penalty policy will be referred to during the discussion of penalty. Respondent was served with a copy at the time the complaint was served, and will not be prejudiced by the introduction of this document.

Wherefore EPA requests that this Motion be granted and that the Complainant's prehearing exchange be amended as set forth herein.

Respectfully Submitted,


Stephen N. Field
Assistant Regional Counsel

AR100070

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. TSCA-III-270
:
NELSON ELECTRICAL CO., INC. :
Richmond, Virginia :
: MOTION TO EXCLUDE
: EVIDENCE FROM TRIAL

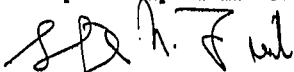
In accordance with 40 C.F.R. §§ 22.04(c), 22.16 and 22.19(b), Complainant, U.S. Environmental Protection Agency hereby moves this court for an order excluding Respondent from making any presentation or otherwise offering any evidence concerning Respondent's financial status. Complainant bases this Motion on the following grounds:

1. Respondent was requested to provide financial information at a November 23, 1987 settlement conference.
2. In a telephone conversation with EPA attorney Katherine Shine on January 13, 1988, respondent advised he would forward financial status information.
3. Respondent was asked by letter of February 9, 1988 to provide financial information. (attached)
4. An April 14, 1988 discovery letter requested financial status information. (attached)
5. June 10, 1988 repeat of April 14 request. (attached)
6. Respondent has not yet submitted any financial status information to Complainant.
7. Complainant will be seriously prejudiced if Respondent is permitted to submit financial status information at trial, as Complainant will not have had an opportunity to analyze such information, and prepare proper cross examination or other appropriate response.

AR100071

In view of the prejudice that will result to Complainant if evidence concerning Respondent's financial status is introduced at trial, Complainant requests that this Motion be granted and that Respondent be barred from introducing such evidence at trial.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "S. N. Field", is written over the typed name.

Stephen N. Field
Assistant Regional Counsel

AR100072



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

AUG 17 1988

John Nelson, President
Nelson Electrical Company, Inc.
1010 Holly Springs Avenue
Richmond, Virginia 23224

Re: Docket No. TSCA-III-270

Dear John:

Attached is a stipulation concerning the handling and analysis of PCB samples taken during the May 14 and 15, 1986 inspection that is the subject of our upcoming hearing. I ask that you sign this, if you agree with the stipulated facts and do not intend to challenge the chain of custody or analysis of those samples. This will save us, the witnesses and the court the time and expense associated with testimony on these issues.

If you have any questions about the stipulation, or wish to propose changes in language, please call me as soon as possible.

Also enclosed in this package are copies of EPA's Motion to Amend Prehearing Exchange, and Motion to Exclude Evidence From trial.

Sincerely,

Stephen N. Field
Assistant Regional Counsel

cc: Honorable J.F. Greene

AR100073

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. TSCA-III-270
:
NELSON ELECTRICAL CO., INC. :
Richmond, Virginia :
:
: STIPULATION

The parties by their undersigned representatives hereby stipulate, for purposes of the above referenced case, as follows:

1. Gerald Crutchley, then an EPA Engineering Technician, and Charles Hufnagel, then an EPA Environmental Engineer, conducted an inspection of Respondent's facility on May 14 and 15, 1986 to determine compliance with the PCB Rule, 40 C.F.R. Part 761.
2. During that inspection, Mr. Crutchley and Mr. Hufnagel collected seven samples for PCB analysis. These samples were taken from various locations at Respondent's facility on May 15, 1986, as noted on the chain of custody form and analysis form attached hereto. The containers and sampling methods used to collect these samples were the approved containers and methods for this type of sampling.
3. The samples were kept under lock and key by Gerald Crutchley until they were delivered to the EPA laboratory in Annapolis Maryland on May 16, 1986, where they were received by Janet Roberson. Those samples were kept under lock and key in the laboratory until analyzed during the period May 22, 1986 to June 9, 1986. Upon receipt at the laboratory, each of the seven samples was assigned a number, which is stamped on the Chain of Custody form and is listed on the corresponding PCB Analysis report of June 16, 1986. The PCB Analysis Report states the results of the EPA laboratory's analysis of those samples.

AR100074

4. The seven (7) samples discussed above were collected, transported, stored and otherwise handled in a fashion that comports with commonly accepted practice in the field, and that did not affect the results obtained from the analysis.
5. The seven (7) samples discussed above were analyzed in a fashion that comports with standard and commonly accepted analytical practice for PCBs, and the results of that analysis were accurately reported on the EPA PCB analysis report of June 16, 1986.

John Nelson, President
Nelson Electrical Company, Inc.

Stephen N. Field
Assistant Regional Counsel
U.S. EPA

AR100075

CERTIFICATE OF SERVICE

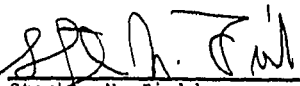
I hereby certify that the originals of the foregoing Motion to Amend pre-hearing exchange and Motion to Exclude Evidence were hand-delivered to the Regional Hearing Clerk, EPA, Region III, and that true and correct copies were mailed first class mail, postage prepaid, to the following persons:

Honorable J.F. Greene
Administrative Law Judge (A-110)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

John Nelson, President
Nelson Electrical Co., Inc.
1010 Holly Springs Avenue
Richmond, Virginia 23224

AUG 17 1988

Date


Stephen N. Field
Assistant Regional Counsel

cc: Lisa Nichols (3HW40)

AR190076

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. TSCA-III-270
:
NELSON ELECTRICAL CO., INC. :
Richmond, Virginia :
: MOTION TO EXCLUDE
: EVIDENCE FROM TRIAL

In accordance with 40 C.F.R. §§ 22.04(c), 22.16 and 22.19(b), Complainant, U.S. Environmental Protection Agency hereby moves this court for an order excluding Respondent from making any presentation or otherwise offering any evidence concerning Respondent's financial status. Complainant bases this Motion on the following grounds:

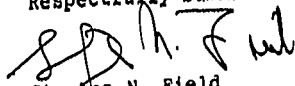
1. Respondent was requested to provide financial information at a November 23, 1987 settlement conference.
2. In a telephone conversation with EPA attorney Katherine Shyne on January 13, 1988, respondent advised he would forward financial status information.
3. Respondent was asked by letter of February 9, 1988 to provide financial information. (attached)
4. An April 14, 1988 discovery letter requested financial status information. (attached)
5. June 10, 1988 repeat of April 14 request. (attached)
6. Respondent has not yet submitted any financial status information to Complainant.
7. Complainant will be seriously prejudiced if Respondent is permitted to submit financial status information at trial, as Complainant will not have had an opportunity to analyze such information, and prepare proper cross examination or other appropriate response.

AR100077



In view of the prejudice that will result to Complainant if evidence concerning Respondent's financial status is introduced at trial, Complainant requests that this Motion be granted and that Respondent be barred from introducing such evidence at trial.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "S. N. Field", is written over the typed name.

Stephen N. Field
Assistant Regional Counsel

AR100078

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

IN RE: : DOCKET NO. TSCA-III-270
:
NELSON ELECTRICAL CO., INC. :
Richmond, Virginia :
Respondent : MOTION TO AMEND COMPLAINANT'S
PREHEARING SUBMITTAL

Pursuant to 40 C.F.R. § 22.16 and 22.19 of the Consolidated Rules of Practice, Complainant, the U.S. Environmental Protection Agency (EPA) hereby moves to amend its Prehearing Submittal of March 23, 1988 as follows:

I. List of Witnesses - Additions

1. Carole Dougherty PCB Case Developer, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Ms. Dougherty is the Case Developer assigned to this case. At the time of the First Prehearing Submittal, no Case Developer was assigned to the case, due to staffing changes in the PCB program at Region III.

Ms. Dougherty will testify as to the methods the PCB program uses to maintain business records, in particular records of PCB inspections.

2. John Ruggerio - Section Chief - PCB Program, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Mr. Ruggerio will testify as to the method of calculation of the penalty and the rationale underlying penalty assessment.

Ms. Dougherty and Mr. Ruggerio will substitute for Lisa Nichols, whose testimony will no longer be necessary. Ms. Dougherty is the person with responsibility for the management of the case at bar, and Mr. Ruggerio is responsible for PCB program decisions as to penalty issues. Together, they are the witnesses most capable of presenting the EPA position on the

AR100079



matters in question. The substitution of these witnesses for Ms. Nichols does not prejudice respondent in any way.

3. S.R. Kayser, chemist, EPA Central Regional Laboratory, 839 Bestgate Road, Annapolis, Maryland 21401.

Ms. Kayser will testify as to the chain of custody for, and the analysis of, samples taken at Respondents facility at the May 14, 1986 inspection. Ms. Kayser's testimony will not be necessary if Respondent agrees to stipulate as to chain of custody and analysis issues. (Copy of stipulation enclosed).

4. Fredrick Knapp, Regional Economist, EPA Region III, 941 Chestnut Building, Philadelphia, Pennsylvania 19107.

Mr. Knapp will respond to any testimony that is admitted concerning Respondent's financial status. Complainant will seek to exclude such evidence in accordance with the Motion to Exclude Evidence submitted this day. Mr. Knapp's testimony will not be necessary if that Motion is granted.

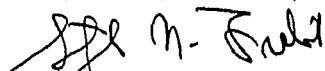
II. Documents to be offered in evidence - Addition

1. ~~EPA~~ Guidelines for the Assessment of Civil Penalties — Under Section 16 of the Toxic Substances Control Act.

The PCB penalty policy will be referred to during the discussion of penalty. Respondent was served with a copy at the time the complaint was served, and will not be prejudiced by the introduction of this document.

Wherefore EPA requests that this Motion be granted and that the Complainant's prehearing exchange be amended as set forth herein.

Respectfully Submitted,



Stephen N. Field
Assistant Regional Counsel

AR100080

CERTIFICATE OF SERVICE


I hereby certify that the originals of the foregoing Motion to Amend pre-hearing exchange and Motion to Exclude Evidence were hand-delivered to the Regional Hearing Clerk, EPA, Region III, and that true and correct copies were mailed first class mail, postage prepaid, to the following persons:

Honorable J.F. Greene
Administrative Law Judge (A-110)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

John Nelson, President
Nelson Electrical Co., Inc.
1010 Holly Springs Avenue
Richmond, Virginia 23224

AUG 17 1988

Date


Stephen N. Field
Assistant Regional Counsel

cc: Lisa Nichols (3HW40)

AR100081